

DAVID L. ANDERSON (CABN 149604)
 United States Attorney
 SARA WINSLOW (DCBN 457643)
 Chief, Civil Division
 PAMELA T. JOHANN (CABN 145558))
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36045
 San Francisco, California 94102
 Telephone: (415) 436-7025
 Facsimile: (415) 436-7234
 pamela.Johann@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

THE CENTER FOR INVESTIGATIVE
 REPORTING and JENNIFER GOLLAN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
 LABOR,

Defendant.

) Case No. 18-cv-02414-DMR

) **JOINT STATUS REPORT AND [PROPOSED]**
) **ORDER**

Pursuant to this Court's Order dated December 8, 2018, ECF No. 16, Plaintiffs The Center For Investigative Reporting and Jennifer Gollan (collectively referred to as "CIR") and Defendant United States Department of Labor ("DOL") respectfully submit this Joint Status Report in this Freedom of Information Act ("FOIA") case.

This case concerns CIR's FOIA request for certain documents from DOL. On July 26, 2018, this Court vacated the initial case management conference and all associated all dates and deadlines pending the resolution of a *Public Citizen Foundation v. DOL, et al.*, Case No. 18-cv-00117 (D.D.C.), a FOIA case filed in the District Court for the District of Columbia on January 19, 2018 ("DC Case"). In the DC Case, a different plaintiff requested the same documents from DOL that are at issue in this case, and DOL has opposed release of those documents in that case on the same grounds that will be asserted by

1 DOL in this case. Because summary judgment briefing in the DC Case was already underway, this
2 Court, pursuant to the parties' request, stayed proceedings pending the resolution of the DC Case. ECF
3 No. 14. In both cases, DOL initially withheld the information under Exemption 7(e). DOL
4 subsequently determined that the information should be withheld under Exemption 4. In a status report
5 filed on December 6, 2018, the parties reported that the DC Case had not yet been resolved but that
6 briefing on cross motions for summary judgment had been completed. ECF No. 16. The Court ordered
7 the parties to file a proposed briefing schedule upon resolution of the DC Case and, in the event the DC
8 Case was not yet resolved, to file an updated joint status report by February 28, 2019. *Id.*

9 The parties report that the summary judgment motion in the D.C. Case remains fully briefed but
10 has not yet been decided. On January 7, 2019, the case was referred to a Magistrate Judge for full case
11 management, including the preparation of a report and recommendation with respect to all pending
12 potentially dispositive motions. Counsel for DOL in the D.C. Case has no further information regarding
13 when the summary judgment motion may be resolved.

14 Since the last status report, the parties have learned that the Supreme Court has granted a petition
15 for certiorari in a case involving the interpretation of FOIA Exemption 4. In that case, *Food Marketing*
16 *Institute v. Argus Leader Media*, Docket No. 18-481 ("*Argus Leader*"), the Supreme Court will consider
17 (1) whether the statutory term "confidential" as used in Exemption 4 "bears its ordinary meaning, thus
18 requiring the government to withhold all 'commercial or financial information' that is confidentially
19 held and not publicly disseminated—regardless of whether a party establishes substantial competitive
20 harm from disclosure," and (2) in the alternative, the requirements of the "substantial-competitive-harm"
21 standard should the Supreme Court decide to retain that test. The Supreme Court has set argument in
22 *Argus Leader* for April 22, 2019, and the decision should be handed down by the end of the term in
23 June.

24 The decision in *Argus Leader* may abrogate or modify the standard for determining
25 confidentiality under Exemption 4 in this Circuit. Although the parties disagree about whether
26 Exemption 4 is applicable to the documents, they agree that briefing in this case should await the
27 Supreme Court's resolution of *Argus Leader* in order to provide the Court with the benefit of the
28 Supreme Court's decision to the extent it may be relevant.

1 For the reasons stated above, the parties respectfully request that the Court continue to stay all
2 dates and deadlines in this case. Upon the Supreme Court's ruling in *Argus Leader*, the parties will
3 promptly meet and confer regarding a briefing schedule for anticipated cross-motions for summary
4 judgment and will file a proposed briefing schedule with the Court within five days.

5 DATED: February 28, 2019

Respectfully submitted,

6 DAVID L. ANDERSON
United States Attorney

7 /s/ Pamela T. Johann
8 PAMELA T. JOHANN
Assistant United States Attorney

9 Attorneys for Defendant

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11
12 DATED: February 28, 2019

THE CENTER FOR INVESTIGATIVE
REPORTING

13 /s/ D. Victoria Baranetsky
14 D. VICTORIA BARANETSKY

15 Attorneys for Plaintiffs

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17 * I, Pamela T. Johann, hereby attest that I have obtained the concurrence in the filing of this document
18 from D. Victoria Baranetsky.

19 /s/ Pamela T. Johann
20 PAMELA T. JOHANN

[PROPOSED] ORDER

Pursuant to the Joint Status Report of the parties and for good cause shown, IT IS HEREBY ORDERED that:

1. All dates and deadlines in this case are STAYED pending the decision of the United States Supreme Court in *Food Marketing Institute v. Argus Leader Media*, Docket No. 18-481 (“*Argus Leader*”);

2. Upon the resolution of *Argus Leader*, the parties shall promptly file with the Court a proposed briefing schedule for cross-motions for summary judgment.

IT IS SO ORDERED.

Dated: _____

HON. DONNA M. RYU
United States Magistrate Judge